

Montana Water Court
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FILED
02/28/2023
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CLERK
Montana Water Court
STATE OF MONTANA
By: D'Ann CIGLER
43B-0785-R-2022
Lambert, Kathryn
6.00

MONTANA WATER COURT, YELLOWSTONE DIVISION
YELLOWSTONE RIVER ABOVE AND INCLUDING BRIDGER CREEK BASIN
BASIN 43B
PRELIMINARY DECREE

CLAIMANTS: Greg H. Langford; Vickie L. Langford

CASE 43B-0785-R-2022
43B 17040-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days to be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must mail a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

Greg H. Langford and Vickie L. Langford claim 43B 17040-00 appeared in the Preliminary Decree with the following remarks:

THE TIMELY FILED OBJECTION OF THE DEPARTMENT OF NATURAL RESOURCES &

CONSERVATION WAS AMENDED BY THE DEPARTMENT OF NATURAL RESOURCES & CONSERVATION TO INCLUDE PLACE OF USE, POINT OF DIVERSION AND MEANS OF DIVERSION BECAUSE THESE ELEMENTS WERE NOT INCLUDED ON THE OBJECTION LIST, ANY WATER USER WHOSE RIGHTS MAY BE ADVERSELY AFFECTED BY ENFORCEMENT OF THESE CHANGES MAY PETITION THE APPROPRIATE COURT FOR RELIEF OR MAY FILE AN OBJECTION AT THE PRELIMINARY DECREE.

INITIAL POINT OF DIVERSION IS WHERE HANGMANS CREEK DUMPS INTO HARRISON DITCH IN GOVERNMENT LOT 1 OF SECTION 5 1S16E. IT APPEARS THAT HARRISON DITCH IS BEING USED AS A NATURAL CARRIER TO A SECONDARY POINT OF DIVERSION. CLAIM NUMBER WAS NOT INCLUDED IN THE BASIN 43B TEMPORARY PRELIMINARY DECREE ISSUED 1/16/1985.

The point of diversion issue remark was not addressed through the objection process. The Water Court is required to resolve the issues raised by each issue remark. Section 85-2-248, MCA.

Under Section 85-2-248(3), MCA, information in the claim file or other information obtained by the Court can be reviewed to determine if it provides a sufficient basis to resolve the issue raised by a remark and the Court can provide the claimant an opportunity to file additional information or evidence. On November 29, 2022 and December 1, 2022, the claimants filed Responses providing the needed information. The Responses are viewable in the Court's FullCourt Enterprise case management system.

APPLICABLE LAW

"All issue remarks to claims that are not resolved through the filing of an objection as provided in 85-2-233 must be resolved as provided in this section." Section 85-2-248(2), MCA.

A properly filed Statement of Claim for Existing Water Right is prima facie proof of its content pursuant to section 85-2-227, MCA. This prima facie proof may be contradicted and overcome by other evidence that proves, by a preponderance of the evidence, that the elements of the claim do not accurately reflect the beneficial use of the water right as it existed prior to July 1, 1973. This is the burden of proof for every assertion that a claim is incorrect including for claimants objecting to their own claims. Rule 19, W.R.Adj.R.

FINDINGS OF FACT

1. The Preliminary Decree states that the point of diversion legal description is the NWSENE of section 5, T1S, R16E, SWEET GRASS. The legal description should be GOVT LOT 1, section 5, T1S, R16E, SWEET GRASS and the following clarification remark should be added:

THE INITIAL POINT OF DIVERSION IS WHERE HANGMANS CREEK DUMPS INTO HARRISON DITCH. HARRISON DITCH IS USED AS A CARRIER TO A SECONDARY POINT OF DIVERSION IN THE NWSENE SECTION 5, T1S, R16E, SWEETGRASS.

The point of diversion issue remark should be removed as resolved.

2. The other remark provides notice of actions taken during the Temporary Preliminary Decree proceedings and does not raise unresolved issues which need to be addressed. The remark should be removed as having served its notice purpose.

CONCLUSION OF LAW

The information provided by the claimant is sufficient to resolve the issue remark without evidentiary hearing. Sections 85-2-248(3) and (11), MCA.

RECOMMENDATIONS

Based upon the above Findings of Fact and Conclusion of Law, this Master recommends that the Court make the changes specified in the Findings of Fact to correct the Preliminary Decree for this Basin. A Post Decree Abstract of Water Right Claim is served with this Report to confirm the recommended changes have been made in the state's centralized record system.

ELECTRONICALLY SIGNED AND DATED BELOW

Service via Email:

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POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
YELLOWSTONE RIVER, ABOVE & INCLUDING BRIDGER CREEK
BASIN 43B

Water Right Number: 43B 17040-00 STATEMENT OF CLAIM
Version: 4 -- POST DECREE
Status: ACTIVE

Owners: VICKIE L LANGFORD
145 LOWER SWEET GRASS RD
BIG TIMBER, MT 59011 7773

GREG H LANGFORD
145 LOWER SWEET GRASS RD
BIG TIMBER, MT 59011 7773

Priority Date: MARCH 27, 1902
Type of Historical Right: FILED
Purpose (use): IRRIGATION
Irrigation Type: FLOOD
Flow Rate: 3.75 CFS
Volume: THE TOTAL VOLUME OF THIS WATER RIGHT SHALL NOT EXCEED THE AMOUNT PUT TO HISTORICAL AND BENEFICIAL USE.
Climatic Area: 2 - MODERATELY HIGH
***Maximum Acres:** 147.00
***Source Name:** HANGMANS CREEK
Source Type: SURFACE WATER
***Point of Diversion and Means of Diversion:**

<u>ID</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	1		5	1S	16E	SWEET GRASS

Period of Diversion: APRIL 1 TO NOVEMBER 1

Diversion Means: DITCH

THE INITIAL POINT OF DIVERSION IS WHERE HANGMANS CREEK DUMPS INTO HARRISON DITCH. HARRISON DITCH IS USED AS A CARRIER TO A SECONDARY POINT OF DIVERSION IN THE NWSENE SECTION 5, T1S, R16E, SWEET GRASS.

Period of Use: APRIL 1 TO NOVEMBER 1

***Place of Use:**

<u>ID</u>	<u>Acres</u>	<u>Govt Lot</u>	<u>Qtr Sec</u>	<u>Sec</u>	<u>Twp</u>	<u>Rge</u>	<u>County</u>
1	40.00		SWNE	5	1S	16E	SWEET GRASS
2	31.00		NWSE	5	1S	16E	SWEET GRASS
3	33.00		SENE	5	1S	16E	SWEET GRASS
4	12.00		NESW	5	1S	16E	SWEET GRASS
5	31.00		SENE	5	1S	16E	SWEET GRASS

Total: 147.00